



भारत का राजपत्र

The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 2

PART II—Section 2

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

४० १७] राष्ट्रीय हिन्दी, संस्कृत, अंग्रेज़ २७, १९७८/चैत्र २७, १९००
No. १७] NEW DELHI, MONDAY, APRIL 17, 1978/CHAITRA 27, 1900

इस भाग में विभिन्न पृष्ठ संलग्न वी जाती हैं जिससे कि इह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed
as a separate compilation

LOK SABHA

The following Bill was introduced in Lok Sabha on the 17th April, 1978:—

BILL No. 58 of 1978

A Bill to provide for the prevention, control and abatement of air pollution, for the establishment, with a view to carrying out the aforesaid purpose, of Boards for the prevention and control of air pollution, for conferring on and assigning to such Boards powers and functions relating thereto and for matters connected therewith.

WHEREAS decisions were taken at the United Nations Conference on the Human Environment held in Stockholm in June, 1972, in which India participated, to take appropriate steps for the preservation of the natural resources of the earth which, among other things, include the preservation of the quality of air and control of air pollution;

AND WHEREAS it is considered necessary to implement the decisions aforesaid in so far as they relate to the preservation of the quality of air and control of air pollution;

Be it enacted by Parliament in the Twenty-ninth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Air (Prevention and Control of Pollution) Act, 1978.

Short title,
extent
and com-
mence-
ment,

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) "air pollution" means any solid, liquid or gaseous substance present in the atmosphere in such concentration as may be or tend to be injurious to human, plant or animal life or property or environment;

(b) "air pollution" means the presence in the atmosphere of any air pollutant;

(c) "approved appliance" means any equipment or gadget used for the burning of any combustible material and approved by the State Board for the purposes of this Act;

(d) "approved fuel" means any fuel approved by the State Board for the purposes of this Act;

(e) "automobile" means any vehicle powered either by internal combustion engine or by any method of generating power to drive such vehicle by burning fuel;

(f) "Board" means the Central Board or a State Board;

(g) "Central Board" means the Central Board for the Prevention and Control of Water Pollution constituted under section 3 of the Water (Prevention and Control of Pollution) Act, 1974;

8 of 1974.

(h) "chimney" includes any structure with an opening or outlet from or through which any air pollutant may be emitted;

(i) "control equipment" means any apparatus, device, equipment or system to control the quality and manner of emission of any air pollutant and includes any device used for securing the efficient operation of any industrial plant;

(j) "emission" means any solid or liquid or gaseous substance coming out of any chimney, duct or flue or any other outlet;

(k) "industrial plant" means any plant used for any industrial or trade purposes and emitting any air pollutant into the atmosphere;

(l) "member" means a member of the Central Board or a State Board, as the case may be, and includes the Chairman thereof;

(m) "occupier", in relation to any factory or premises, means the person who has control over the affairs of the factory or the premises and where the said affairs are entrusted to a managing agent, such agent shall be deemed to be the occupier of the factory or the premises;

(n) "prescribed" means prescribed by rules made under this Act by the Central Government or, as the case may be, the State Government;

(o) "State Board" means.—

(i) in relation to a State in which the Water (Prevention and Control of Pollution) Act, 1974 is in force and the State Government has constituted for that State a State Board for

8 of 1974.

the Prevention and Control of Water Pollution under section 4 of that Act, the said State Board; and

(ii) in relation to any other State, the State Board for the Prevention and Control of Air Pollution constituted by the State Government under section 5 of this Act.

CHAPTER II

CENTRAL AND STATE BOARDS FOR THE PREVENTION AND CONTROL OF AIR POLLUTION

6 of 1974.

3. The Central Board for the Prevention and Control of Water Pollution constituted under section 3 of the Water (Prevention and Control of Pollution) Act, 1974, shall, without prejudice to the exercise and performance of its powers and functions under that Act, exercise the powers and perform the functions of the Central Board for the Prevention and Control of Air Pollution under this Act.

6 of 1974.

4. In any State in which the Water (Prevention and Control of Pollution) Act, 1974, is in force and the State Government has constituted for that State a State Board for the Prevention and Control of Water Pollution under section 4 of that Act, such State Board shall be deemed to be the State Board for the Prevention and Control of Air Pollution constituted under section 5 of this Act and accordingly that State Board for the Prevention and Control of Water Pollution shall, without prejudice to the exercise and performance of its powers and functions under that Act, exercise the powers and perform the functions of the State Board for the Prevention and Control of Air Pollution under this Act.

6 of 1974.

5. (1) In any State in which the Water (Prevention and Control of Pollution) Act, 1974, is not in force, or that Act is in force but the State Government has not constituted a State Board for the Prevention and Control of Water Pollution under that Act, the State Government shall, with effect from such date as it may, by notification in the Official Gazette, appoint, constitute a State Board for the Prevention and Control of Air Pollution under such name as may be specified in the notification, to exercise the powers conferred on, and perform the functions assigned to, that Board under this Act.

(2) A State Board constituted under this Act shall consist of the following members, namely:—

(a) a Chairman, being a person having special knowledge or practical experience in respect of matters relating to environmental protection, to be nominated by the State Government:

Provided that the Chairman may be either whole-time or part-time as the State Government may think fit;

(b) such number of officials, not exceeding five, as the State Government may think fit, to be nominated by the State Government to represent that Government;

(c) such number of persons, not exceeding five, as the State Government may think fit, to be nominated by the State Govern-

Central Board for the Prevention and Control of Air Pollution.

State Boards for the Prevention and Control of Water Pollution to be State Boards for the Prevention and Control of Air Pollution.

Constitution of State Boards.

ment from amongst the members of the local authorities functioning within the State;

(d) such number of non-officials, not exceeding three, as the State Government may think fit, to be nominated by the State Government to represent the interests of agriculture, fishery or industry or trade or any other interests which, in the opinion of that Government, ought to be represented;

(e) two persons to represent the companies or corporations owned, controlled or managed by the State Government, to be nominated by that Government;

(f) a full-time member-secretary having practical experience in respect of matters relating to environmental protection and having administrative experience, to be appointed by the State Government.

(3) Every State Board constituted under this Act, shall be a body corporate with the name specified by the State Government in the notification issued under sub-section (1), having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire and dispose of property and to contract, and may by the said name sue or be sued.

6. No State Board shall be constituted for a Union territory and in relation to a Union territory, the Central Board shall exercise the powers and perform the functions of a State Board under this Act for that Union territory:

Provided that in relation to any Union territory the Central Board may delegate all or any of its powers and functions empowered to be performed and discharged under this section to such person or body of persons as the Central Government may specify.

Central Board to exercise the powers and perform the functions of a State Board in the Union territories.

Terms and conditions of service of members.

7. (1) Save as otherwise provided by or under this Act, a member of a State Board constituted under this Act, other than the member-secretary, shall hold office for a term of three years from the date on which his nomination is notified in the Official Gazette:

Provided that a member shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

(2) The term of office of a member of a State Board constituted under this Act and nominated under clause (b) or clause (e) of sub-section (2) of section 5 shall come to an end as soon as he ceases to hold the office under the State Government or, as the case may be, the company or corporation owned, controlled or managed by the State Government, by virtue of which he was nominated.

(3) The State Government may, if it thinks fit, remove any member of a State Board constituted under this Act before the expiry of his term of office, after giving him a reasonable opportunity of showing cause against the same.

(4) A member of a State Board constituted under this Act, other than the member-secretary, may at any time resign his office by writing under his hand addressed—

(a) In the case of the Chairman, to the State Government; and

(b) in any other case, to the Chairman of the State Board,

and the seat of the Chairman or such other member shall thereupon become vacant.

(5) A member of a State Board constituted under this Act, other than the member-secretary, shall be deemed to have vacated his seat, if he is absent without reason, sufficient in the opinion of the State Board, from three consecutive meetings of the State Board or where he is nominated under clause (c) of sub-section (2) of section 5, he ceases to be a member of the local authority and such vacation of seat shall, in either case, take effect from such date as the State Government may, by notification in the Official Gazette, specify.

(6) A casual vacancy in a State Board constituted under this Act shall be filled by a fresh nomination and the person nominated to fill the vacancy shall hold office only for the remainder of the term for which the member whose place he takes was nominated.

(7) A member of a State Board constituted under this Act shall be eligible for re-nomination, but not for more than two terms.

(8) The other terms and conditions of service of a member of a State Board constituted under this Act, other than the Chairman and member-secretary, shall be such as may be prescribed.

(9) The other terms and conditions of service of the Chairman of a State Board constituted under this Act shall be such as may be prescribed.

8. (1) No person shall be a member of a State Board constituted under this Act, who—

Disqualifications.

(a) is, or at any time has been, adjudged insolvent or has suspended payment of his debts or has compounded with his creditors, or

(b) is of unsound mind and has been so declared by a competent court, or

(c) is, or has been, convicted of an offence which, in the opinion of the State Government, involves moral turpitude, or

(d) is, or at any time has been, convicted of an offence under this Act, or

(e) has so abused, in the opinion of the State Government, his position as a member, as to render his continuance on the State Board detrimental to the interests of the general public.

(2) No order of removal shall be made by the State Government under this section unless the member concerned has been given a reasonable opportunity of showing cause against the same.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (7) of section 7, a member who has been removed under this section shall not be eligible to continue to hold office until his successor enters upon his office or, as the case may be, for re-nomination as a member.

Vacation
of seats
by mem-
bers.

Meetings
of
Board.

Constitu-
tion of
com-
mit-
tees.

Tempo-
rary asso-
ciation of
persons
with
Board
for par-
ticular
purposes.

Vacancy
in Board
not to
invalidate
acts or
proceed-
ings.

Member-
secretary
and offi-
cers and
other em-
ployees
of State
Boards.

9. If a member of a State Board constituted under this Act becomes subject to any of the disqualifications specified in section 8, his seat shall become vacant.

10. For the purposes of this Act, a Board shall meet at least once in every three months and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed:

Provided that if, in the opinion of the Chairman, any business of an urgent nature is to be transacted, he may convene a meeting of the Board at such time as he thinks fit for the aforesaid purpose.

11. (1) A Board may constitute as many committees consisting wholly of members or wholly of other persons or partly of members and partly of other persons and for such purpose or purposes as it may think fit.

(2) A committee constituted under this section shall meet at such time and at such place, and shall observe such rules of procedure in regard to the transaction of business at its meetings, as may be prescribed.

(3) The members of a committee other than the members of the Board shall be paid such fees and allowances, for attending its meetings and for attending to any other work of the Board as may be prescribed.

12. (1) A Board may associate with itself in such manner, and for such purposes, as may be prescribed, any person whose assistance or advice it may desire to obtain in performing any of its functions under this Act.

(2) A person associated with the Board under sub-section (1) for any purpose shall have a right to take part in the discussions of the Board relevant to that purpose, but shall not have a right to vote at a meeting of the Board and shall not be a member of the Board for any other purpose.

(3) A person associated with a Board under sub-section (1) shall be entitled to receive such fees and allowances as may be prescribed.

13. No act or proceeding of a Board or any committee thereof shall be called in question on the ground merely on the existence of any vacancy in, or any defect in the constitution of, the Board or such committee, as the case may be.

14. (1) The terms and conditions of service of the member-secretary of a State Board constituted under this Act shall be such as may be prescribed.

(2) The member-secretary of a State Board, whether constituted under this Act or not, shall exercise such powers and perform such duties as may be prescribed.

(3) Subject to such rules as may be made by the State Government in this behalf, a State Board, whether constituted under this Act or not, may appoint such officers and other employees as it considers necessary for the efficient performance of its functions under this Act.

(4) The method of appointment, the conditions of service and the scales of pay of the officers (other than the member-secretary) and other employees of a State Board appointed under sub-section (3) shall be such as may be determined by regulations made by the State Board under this Act.

15. A State Board may, by general or special order, delegate to the Chairman or the member-secretary subject to such conditions and limitations, if any, as may be specified in the order, such of its powers and functions under this Act as it may deem necessary.

Delegation of powers.

6 of 1974.

CHAPTER III

POWERS AND FUNCTIONS OF BOARDS

16. (1) Subject to the provisions of this Act, and without prejudice to the performance of its functions under the Water (Prevention and Control of Pollution) Act, 1974, the main functions of the Central Board shall be to improve the quality of air and to prevent, control or abate air pollution in the country.

Functions of Central Board.

(2) In particular and without prejudice to the generality of the foregoing function, the Central Board may perform all or any of the following functions, namely:—

(a) advise the Central Government on any matter concerning the improvement of the quality of air and the prevention, control or abatement of air pollution;

(b) plan and cause to be executed a nation-wide programme for the prevention, control or abatement of air pollution;

(c) co-ordinate the activities of the State Boards and resolve disputes among them;

(d) provide technical assistance and guidance to the State Boards, carry out and sponsor investigations and research relating to problems of air pollution and prevention, control or abatement of air pollution;

(e) plan and organise the training of persons engaged or to be engaged in programmes for the prevention, control or abatement of air pollution on such terms and conditions as the Central Board may specify;

(f) organise through mass media a comprehensive programme regarding the prevention, control or abatement of air pollution;

(g) collect, compile and publish technical and statistical data relating to air pollution and the measures devised for its effective prevention, control or abatement and prepare manuals, codes or guides relating to prevention, control or abatement of air pollution;

(h) to lay down standards for the quality of air;

(i) collect and disseminate information in respect of matters relating to air pollution;

(j) perform such other functions as may be prescribed.

(3) The Central Board may establish or recognise a laboratory or laboratories to enable the Central Board to perform its functions under this section efficiently.

(4) The Central Board may—

(a) delegate any of its functions under this Act generally or specially to any of the committees appointed by it;

(b) do such other things and perform such other acts as it may think necessary for the proper discharge of its functions and generally for the purpose of carrying into effect the purposes of this Act.

Functions
of State
Boards.

17. (1) Subject to the provisions of this Act and without prejudice to the performance of its functions, if any, under the Water (Prevention and Control of Pollution) Act, 1974, the functions of a State Board shall be—

6 of 1974.

(a) to plan a comprehensive programme for the prevention, control or abatement of air pollution and to secure the execution thereof;

(b) to advise the State Government on any matter concerning the prevention, control or abatement of air pollution;

(c) to collect and disseminate information relating to air pollution;

(d) to collaborate with the Central Board in organising the training of persons engaged or to be engaged in programmes relating to prevention, control or abatement of air pollution and to organise mass-education programme relating thereto;

(e) to inspect, at all reasonable times, any control equipment, industrial plant or manufacturing process and to give, by order, such directions to such persons as it may consider necessary to take steps for the prevention, control or abatement of air pollution;

(f) to lay down, in consultation with the Central Board, and having regard to the standards for the quality of air laid down by the Central Board, standards for emission of air pollutants into the atmosphere from industrial plants and automobiles or for the discharge of any air pollutant into the atmosphere from any other source whatsoever not being a ship or an aircraft:

Provided that different standards for emission may be laid down under this clause for different industrial plants having regard to the quantity and composition of emission of air pollutants into the atmosphere from such industrial plants;

(g) to advise the State Government with respect to the suitability of any premises for carrying on any industry which is likely to cause air pollution;

(h) to perform such other functions as may be prescribed or as may, from time to time, be entrusted to it by the Central Board or the State Government;

(i) to do such other things and to perform such other acts as it may think necessary for the proper discharge of its functions and generally for the purpose of carrying into effect the purposes of this Act.

(2) A State Board may establish or recognise a laboratory or laboratories to enable the State Board to perform its functions under this section efficiently.

Power to
give
direc-
tions.

18. In the performance of its functions under this Act—

(a) the Central Board shall be bound by such directions in writing as the Central Government may give to it; and

(b) every State Board shall be bound by such directions in writing as the Central Board or the State Government may give to it:

Provided that where a direction given by the State Government is inconsistent with the direction given by the Central Board, the matter shall be referred to the Central Government for its decision.

CHAPTER IV

PREVENTION AND CONTROL OF AIR POLLUTION

19. (1) The State Government may, after consultation with the State Board, by notification in the Official Gazette, declare any area or areas within the State as air pollution control area or areas for the purposes of this Act.

Power to declare air pollution control areas.

(2) Any area may be declared under sub-section (1) as air pollution control area either by reference to a map or by reference to the boundaries of any one or more districts or partly of one district and partly of another district.

(3) The State Government may, after consultation with the State Board, by notification in the Official Gazette,—

(a) alter any air pollution control area whether by way of extension or reduction;

(b) declare a new air pollution control area in which may be merged one or more existing air pollution control areas or any part or parts thereof.

(4) If the State Government is of opinion that the use of any fuel, other than an approved fuel, in any air pollution control area or part thereof, may cause or is likely to cause air pollution, it may, by notification in the Official Gazette, prohibit the use of such fuel in such area or part thereof with effect from such date (being not less than three months from the date of publication of the notification) as may be specified in the notification.

(5) The State Government may, by notification in the Official Gazette, direct that with effect from such date as may be specified therein, no appliance, other than an approved appliance, shall be used in the premises situated in an air pollution control area:

Provided that different dates may be specified for different parts of an air pollution control area or for the use of different appliances.

(6) If the State Government is of opinion that the burning of any material (not being fuel) in any air pollution control area or part thereof may cause or is likely to cause air pollution, it may, by notification in the Official Gazette, prohibit the burning of such material in such area or part thereof.

20. With a view to ensuring that the standards for emission of air pollutants from automobiles laid down by the State Board under clause (f) of sub-section (1) of section 17 are complied with, the State Government shall, in consultation with the State Board, give such instructions as may be deemed necessary to the concerned authority in charge of registration of motor vehicles under the Motor Vehicles Act, 1939, and such authority shall, notwithstanding anything contained in that Act or the rules made thereunder be bound to comply with such instructions.

Power to give instructions for ensuring standards for emission from automobiles.

Restrictions on use of certain industrial plants.

21. (1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board, operate any industrial plant for the purpose of any industry specified in the Schedule in an air pollution control area.

(2) An application for consent of the State Board under sub-section (1) shall be accompanied with such fees as may be prescribed and shall be made in the prescribed form and shall contain the particulars of the industrial plant and such other particulars as may be prescribed:

Provided that where any person, immediately before the declaration of any area as an air pollution control area, operates in such area any industrial plant for the purpose of any industry specified in the Schedule, such person shall make the application under this sub-section within such period (being not less than three months from the date of such declaration) as may be prescribed and where such person makes such application, he shall be deemed to be operating such industrial plant with the consent of the State Board until the consent applied for has been refused or the expiry of the period of four months referred to in sub-section (4), whichever is earlier.

(3) The State Board may make such inquiry as it may deem fit in respect of the application for consent referred to in sub-section (1) and in making any such inquiry, shall follow such procedure as may be prescribed.

(4) Where within a period of four months after the receipt of the application for consent referred to in sub-section (1), complete in all respects, the State Board does not refuse to grant the consent, or upon refusal, does not communicate the refusal to the person who has made the application, it shall be presumed that the consent applied for has been granted by the State Board.

(5) Every person to whom a consent has been granted by the State Board under sub-section (1) or is presumed to have been so granted under sub-section (4), shall comply with the following conditions, namely:—

(i) the control equipment of such specifications as the State Board may specify in this behalf shall be installed and operated in the premises where the industry is carried on or proposed to be carried on;

(ii) the existing control equipment, if any, shall be altered or replaced in accordance with the directions of the State Board;

(iii) the control equipment referred to in clause (i) or clause (ii) shall be kept at all times in good running condition;

(iv) chimney, wherever necessary, of such dimension as the State Board may specify in this behalf shall be erected or re-erected in such premises; and

(v) the conditions referred to in clause (i), clause (ii) and clause (iv) shall be complied with within such period as the State Board may specify in this behalf:

Provided that in the case of a person operating any industrial plant for the purpose of any industry specified in the Schedule in an air pollution control area immediately before the date of declaration of such area as an air pollution control area, the period so specified shall not be less than six months;

Provided further that—

- (a) after the installation of any control equipment in accordance with the specifications under clause (i), or
- (b) after the alteration or replacement of any control equipment in accordance with the directions of the State Board under clause (ii), or
- (c) after the erection or re-erection of any chimney under clause (iv),

no control equipment or chimney shall be altered or replaced or, as the case may be, erected or re-erected except with the previous approval of the State Board.

(6) If due to any technological improvement or otherwise the State Board is of opinion that all or any of the conditions referred to in sub-section (5) requires variation (including the change of any control equipment, either in whole or in part), the State Board shall, after giving the person to whom consent has been granted or is presumed to have been granted an opportunity of being heard, vary all or any of such conditions and thereupon such person shall be bound to comply with the conditions as so varied.

(7) Where a person to whom consent has been or is presumed to have been granted by the State Board under sub-section (1) or sub-section (4), as the case may be, transfers his interest in the industry to any other person, such consent shall be deemed to have been granted to such other person and he shall be bound to comply with all the conditions subject to which it was granted as if the consent was granted to him originally.

22. No person carrying on any industry specified in the Schedule or operating any industrial plant, in any air pollution control area shall discharge or cause or permit to be discharged the emission of any air pollutant in excess of the standards laid down by the State Board under clause (f) of sub-section (1) of section 17.

Persons carrying on industry, etc., not to allow emission of air pollutant in excess of the standards laid down by the State Board.

23. (1) Where in any air pollution control area the emission of any air pollutant into the atmosphere in excess of the standards laid down by the State Board occurs or is apprehended to occur due to accident or other unforeseen act or event, the person in charge of the premises from where such emission occurs or is apprehended to occur shall forthwith intimate the fact of such occurrence or the apprehension of such occurrence to the State Board and to such authorities or agencies as may be prescribed.

(2) On receipt of intimation under sub-section (1), the State Board and the authorities or agencies shall, as early as practicable, take such remedial measures as are necessary to mitigate the emission of such air pollutants.

Furnishing of information to the State Board and other agencies in certain cases.

Power of entry and inspection.

24. (1) Subject to the provisions of this section, any person empowered by a State Board in this behalf shall have a right to enter, at all reasonable times with such assistance as he considers necessary, any place—

(a) for the purpose of performing any of the functions of the State Board entrusted to him;

(b) for the purpose of determining whether and if so in what manner, any such functions are to be performed or whether any provisions of this Act or the rules made thereunder or any notice, order, direction or authorisation served, made, given or granted under this Act is being or has been complied with;

(c) for the purpose of examining and testing any control equipment, industrial plant, record, register, document or any other material object or for conducting a search of any place in which he has reason to believe that an offence under this Act or the rules made thereunder has been or is being or is about to be committed and for seizing any such control equipment, industrial plant, record, register, document or other material object if he has reason to believe that it may furnish evidence of the commission of an offence punishable under this Act or the rules made thereunder.

(2) Every person carrying on any industry specified in the Schedule and every person operating any control equipment or any industrial plant, in an air pollution control area shall be bound to render all assistance to the person empowered by the State Board under sub-section (1) for carrying out the functions under that sub-section and if he fails to do so without any reasonable cause or excuse, he shall be guilty of an offence under this Act.

(3) If any person wilfully delays or obstructs any person empowered by the State Board under sub-section (1) in the discharge of his duties, he shall be guilty of an offence under this Act.

Power to obtain information.

25. For the purposes of carrying out the functions entrusted to it, the State Board or any officer empowered by it in that behalf may call for any information (including information regarding the types of air pollutants emitted into the atmosphere and the level of the emission of such air pollutants) from any person carrying on any industry or operating any control equipment or industrial plant and for the purpose of verifying the correctness of such information, the State Board or such officer shall have the right to inspect the premises where such industry, control equipment or industrial plant is being carried on or operated.

Power to take samples of air or emission and procedure to be followed in connection therewith.

26. (1) A State Board or any officer empowered by it in this behalf shall have power to take, for the purpose of analysis, samples of air or emission from any chimney, flue or duct or any other outlet in such manner as may be prescribed.

(2) The result of any analysis of a sample of emission taken under sub-section (1) shall not be admissible in evidence in any legal proceeding unless the provisions of sub-sections (3), (4) and (5) are complied with.

(3) Subject to the provisions of sub-sections (4) and (5), when a sample of emission is taken for analysis under sub-section (1), the person taking the sample shall—

(a) serve on the occupier or his agent, a notice, then and there, in such form as may be prescribed, of his intention to have it so analysed;

(b) in the presence of the occupier or his agent, collect a sample of emission for analysis and divide in such manner as may be prescribed the sample into two parts;

(c) cause each part of the sample to be placed in a container which shall be marked and sealed and shall also be signed both by the person taking the sample and the occupier or his agent;

(d) send one container forthwith to the laboratory established or recognised by the State Board under section 17;

(e) on the request of the occupier or his agent, which shall be made at the time when the notice is served on him under clause (a), send the second container to the laboratory established or specified under sub-section (1) of section 28.

(4) When a sample of emission is taken for analysis under sub-section (1) and the person taking the sample serves on the occupier or his agent, a notice under clause (a) of sub-section (3), then—

(a) in a case where the occupier or his agent wilfully absents himself, the person taking the sample shall collect the sample of emission for analysis and divide the sample into two parts and cause each part to be placed in a container which shall be marked and sealed and shall also be signed by the person taking the sample, and

(b) in a case where the occupier or his agent is present at the time of taking the sample but refuses to sign the marked and sealed containers of the sample of emission as required under clause (c) of sub-section (3), the two marked and sealed containers shall be signed by the person taking the sample,

and one of the containers shall be sent forthwith by the person taking the sample for analysis to the laboratory referred to in clause (e) of sub-section (3) and such person shall inform the Government analyst appointed under sub-section (1) of section 29, in writing, about the wilful absence of the occupier or his agent, or, as the case may be, his refusal to sign the container.

(5) When a sample of emission is taken for analysis under sub-section (1) and the person taking the sample serves on the occupier or his agent a notice under clause (a) of sub-section (3) and the occupier or his agent who is present at the time of taking the sample does not make a request as provided in clause (e) of sub-section (3), then, the sample shall not be divided into two parts and the sample so taken shall be placed in a container which shall be marked and sealed and shall also be signed by the person taking the sample and the same shall be sent forthwith by such person for analysis to the laboratory referred to in clause (d) of sub-section (3).

27. (1) Where a sample of emission has been sent for analysis to the laboratory established or recognised by the State Board, the Board ana-

result of analysis on samples taken under section 28.

lyst appointed under sub-section (2) of section 29 shall analyse the sample and submit a report in the prescribed form of such analysis in triplicate to the State Board.

(2) On receipt of the report under sub-section (1), one copy of the report shall be sent by the State Board to the occupier or his agent referred to in section 26, another copy shall be preserved for production before the court in case any legal proceedings are taken against him and the other copy shall be kept by the State Board.

(3) Where a sample has been sent for analysis under clause (e) of sub-section (3) or sub-section (4) of section 26 to any laboratory mentioned therein, the Government analyst referred to in the said sub-section (4) shall analyse the sample and submit a report in the prescribed form of the result of the analysis in triplicate to the State Board which shall comply with the provisions of sub-section (2).

(4) If there is any inconsistency or discrepancy between, or variation in the results of, the analysis carried out by the laboratory established or recognised by the State Board and that of the laboratory established or specified under section 28, the report of the latter shall prevail.

(5) Any cost incurred in getting any sample analysed at the request of the occupier or his agent as provided in clause (e) of sub-section (3) of section 26 or when he wilfully absents himself or refuses to sign the marked and sealed containers of sample of emission under sub-section (4) of that section, shall be payable by such occupier or his agent and in case of default the same shall be recoverable from him as arrears of land revenue or of public demand.

State Air Laboratory.

28. (1) The State Government may, by notification in the Official Gazette,—

(a) establish a State Air Laboratory; or

(b) specify any laboratory or institute as a State Air Laboratory, to carry out the functions entrusted to the State Air Laboratory under this Act.

(2) The State Government may, after consultation with the State Board, make rules prescribing—

(a) the functions of the State Air Laboratory;

(b) the procedure for the submission to the said laboratory of samples of air or emission for analysis or tests, the form of the laboratory's report thereon and the fees payable in respect of such report;

(c) such other matters as may be necessary or expedient to enable that laboratory to carry out its functions.

Analysis.

29. (1) The State Government may, by notification in the Official Gazette, appoint such persons as it thinks fit and having the prescribed qualifications to be Government analysts for the purpose of analysis of samples of air or emission sent for analysis to any laboratory established or specified under sub-section (1) of section 28.

(2) Without prejudice to the provisions of section 14, the State Board may, by notification in the Official Gazette, and with the approval of the State Government, appoint such persons as it thinks fit and having the prescribed qualifications to be Board analysts for the purpose of analysis of samples of air or emission sent for analysis to any laboratory established or recognised under section 17.

30. Any document purporting to be a report signed by a Government analyst or, as the case may be, a State Board analyst may be used as evidence of the facts stated therein in any proceeding under this Act.

Reports
of ana-
lysts.

31. (1) Any person aggrieved by an order made by the State Board under this Act may, within thirty days from the date on which the order is communicated to him, prefer an appeal to such authority (hereinafter referred to as the Appellate Authority) as the State Government may think fit to constitute:

Appeals.

Provided that the Appellate Authority may entertain the appeal after the expiry of the said period of thirty days if such authority is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) The Appellate Authority shall consist of a single person or three persons as the State Government may think fit to be appointed by the State Government.

(3) The form and the manner in which an appeal may be preferred under sub-section (1), the fees payable for such appeal and the procedure to be followed by the Appellate Authority shall be such as may be prescribed.

(4) On receipt of an appeal preferred under sub-section (1), the Appellate Authority shall, after giving the appellant and the State Board an opportunity of being heard, dispose of the appeal as expeditiously as possible.

CHAPTER V

FUND, ACCOUNTS AND AUDIT

32. The Central Government may, after due appropriation made by Parliament by law in this behalf, make in each financial year such contributions to the State Boards as it may think necessary to enable the State Boards to perform their functions under this Act:

Contribu-
tions by
Central
Govern-
ment.

6 of 1974.

Provided that when the Water (Prevention and Control of Pollution) Act, 1974, is amended empowering the State Board for the Prevention and Control of Water Pollution constituted under that Act to expend money from its fund thereunder for the purposes of this Act also, then, with effect from the date on which such amendment comes into force in any State in which a State Board for the Prevention and Control of Water Pollution has been constituted under that Act, the provisions of this section shall, in relation to such State, have effect as if for the words "State Boards", where they occur in the first place, the words "State Boards constituted under this Act" and for the words "State Boards", where they occur in the second place, the words "said State Boards" had been substituted.

33. (1) Every State Board shall have its own fund for the purposes of this Act and all sums which may, from time to time, be paid to it by the Central Government and all other receipts (by way of contributions, if any, from the State Government, fees, gifts, grants, donations, benefactions or otherwise) of that Board shall be carried to the fund of the Board and all payments by the Board shall be made therefrom.

Fund of
Board.

(2) Every State Board may expend such sums as it thinks fit for performing its functions under this Act and such sums shall be treated as expenditure payable out of the fund of that Board.

6 of 1974.

(3) When the Water (Prevention and Control of Pollution) Act, 1974, is amended empowering a State Board for the Prevention and Control of Water Pollution constituted under that Act to expend money from its fund thereunder for the purposes of this Act also, then, with effect from the date on which such amendment comes into force in any State in which a State Board for the Prevention and Control of Water Pollution has been constituted under that Act, the provisions of sub-sections (1) and (2) shall, in relation to such State, have effect as if for the words "State Board", at both the places where they occur, the words "State Board constituted under this Act" had been substituted.

Budget.

34. The Central Board or, as the case may be, the State Board shall, during each financial year, prepare, in such form and at such time as may be prescribed, a budget in respect of the financial year next ensuing showing the estimated receipt and expenditure under this Act, and copies thereof shall be forwarded to the Central Government or, as the case may be, the State Government.

Annual report.

35. (1) The Central Board shall, during each financial year, prepare, in such form and at such time as may be prescribed, an annual report giving a true and full account of its activities under this Act during the previous financial year and copies thereof shall be forwarded to the Central Government and that Government shall cause every such report to be laid before both Houses of Parliament within six months of the date on which it is received by that Government.

(2) Every State Board shall, during each financial year, prepare, in such form and at such time as may be prescribed, an annual report giving a true and full account of its activities under this Act during the previous financial year and copies thereof shall be forwarded to the State Government and that Government shall cause every such report to be laid before the State Legislature within a period of nine months of the date on which it is received by that Government.

Accounts and audit.

36. (1) Every Board shall, in relation to its functions under this Act, maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government or, as the case may be, the State Government.

(2) The accounts of the Board shall be audited by an auditor duly qualified to act as an auditor of companies under section 226 of the Companies Act, 1956.

1 of 1956.

(3) The said auditor shall be appointed by the Central Government or, as the case may be, the State Government on the advice of the Comptroller and Auditor-General of India.

(4) Every auditor appointed to audit the accounts of the Board under this Act shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Board.

(5) Every such auditor shall send a copy of his report together with an audited copy of the accounts to the Central Government or, as the case may be, the State Government.

(6) The Central Government shall, as soon as may be after the receipt of the audit report under sub-section (5), cause the same to be laid before both Houses of Parliament.

(7) The State Government shall, as soon as may be after the receipt of the audit report under sub-section (5), cause the same to be laid before the State Legislature.

CHAPTER VI

PENALTIES AND PROCEDURE

37. (1) Whoever fails to comply with any order or direction given under this Act, within such time as may be specified in the said order or direction shall, in respect of each such failure, be punishable with fine which may extend to five thousand rupees, and in case the failure continues, with an additional fine which may extend to one hundred rupees for every day during which such failure continues after the conviction for the first such failure.

Failure
to comply
with
orders
or direc-
tions
issued
under
the Act.

(2) If the failure referred to in sub-section (1) continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which may extend to six months.

38. Whoever—

Penalties
for cer-
tain acts.

(a) destroys, pulls down, removes, injures or defaces any pillar, post or stake fixed in the ground or any notice or other matter put up, inscribed or placed, by or under the authority of the Board, or

(b) obstructs any person acting under the orders or directions of the Board from exercising his powers and performing his functions under this Act, or

(c) damages any works or property belonging to the Board, or

(d) fails to furnish to the Board or any officer or other employee of the Board any information required by the Board or such officer or other employee for the purpose of this Act, or

(e) fails to intimate the occurrence of the emission of air pollutants into the atmosphere in excess of the standards laid down by the State Board or the apprehension of such occurrence, to the State Board and other prescribed authorities or agencies, or

(f) in giving any information which he is required to give under this Act, knowingly or wilfully makes a statement which is false in any material particular, or

(g) for the purpose of obtaining any consent under section 21, knowingly or wilfully makes a statement which is false in any material particular,

shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.

Penalty
for con-
traven-
tion of
certain
provisions
of the
Act.

Offences
by com-
panies.

39. Whoever contravenes any of the provisions of this Act, for which no penalty has been elsewhere provided in this Act, shall be punishable with fine which may extend to five thousand rupees, and in the case of continuing contravention, with an additional fine which may extend to one hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

40. (1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) “company” means any body corporate, and includes a firm or other association of individuals; and

(b) “director” in relation to a firm means a partner in the firm.

Offences
by Gov-
ernment
Depart-
ments.

41. Where an offence under this Act has been committed by any Department of Government, the Head of the Department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this section shall render such Head of the Department liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

Protection
of action
taken in
good faith.

42. No suit or other legal proceedings shall lie against the Government or any officer of the Government or any member or any officer or other employee of the Board in respect of anything which is done or intended to be done in good faith in pursuance of this Act or the rules made thereunder.

43. No court shall take cognizance of any offence under this Act except on a complaint made by, or with the previous sanction in writing of the State Board, and no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

Cogni-
zance of
offences.

45 of 1860.

44. All the members and all officers and other employees of a Board when acting or purporting to act in pursuance of any of the provisions of this Act or the rules made thereunder shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Members,
officers
and em-
ployees
of Board
to be
public
servants.

45. The Central Board shall, in relation to its functions under this Act, furnish to the Central Government, and a State Board shall, in relation to its functions under this Act, furnish to the State Government and to the Central Board such reports, returns, statistics, accounts and other information as that Government, or, as the case may be, the Central Board may, from time to time, require.

Reports
and re-
turns.

46. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an Appellate Authority constituted under this Act is empowered by or under this Act to determine, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Bar of
jurisdi-
ction.

CHAPTER VII

MISCELLANEOUS

47. (1) If at any time the State Government is of opinion—

Power of
State
Govern-
ment to
supersede
State
Board.

(a) that a State Board constituted under this Act has persistently made default in the performance of the functions imposed on it by or under this Act, or

(b) that circumstances exist which render it necessary in the public interest so to do,

the State Government may, by notification in the Official Gazette, supersede the State Board for such period, not exceeding one year, as may be specified in the notification:

Provided that before issuing a notification under this sub-section for the reasons mentioned in clause (a), the State Government shall give a reasonable opportunity to the State Board to show cause why it should not be superseded and shall consider the explanations and objections, if any, of the State Board.

(2) Upon the publication of a notification under sub-section (1) superseding the State Board,—

(a) all the members shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under this Act, be exercised, performed or discharged by the State Board shall, until the State Board is reconstituted under sub-section (3), be exercised, performed or discharged by such person or persons as the State Government may direct;

(c) all property owned or controlled by the State Board shall, until the Board is reconstituted under sub-section (3), vest in the State Government.

(3) On the expiration of the period of supersession specified in the notification issued under sub-section (1), the State Government may—

(a) extend the period of supersession for such further term, not exceeding six months, as it may consider necessary; or

(b) reconstitute the State Board by a fresh nomination or appointment, as the case may be, and in such case any person who vacated his office under clause (a) of sub-section (2) shall not be deemed disqualified for nomination or appointment:

Provided that the State Government may at any time before the expiration of the period of supersession, whether originally specified under sub-section (1) or as extended under this sub-section, take action under clause (b) of this sub-section.

6 of 1974.

Special provision in the case of supersession of the Central Board or the State Boards constituted under the Water (Prevention and Control of Pollution) Act, 1974.

48. Where the Central Board or any State Board constituted under the Water (Prevention and Control of Pollution) Act, 1974, is superseded by the Central Government or the State Government, as the case may be, under that Act, all the powers, functions and duties of the Central Board or such State Board under this Act shall be exercised, performed or discharged during the period of such supersession by the person or persons, exercising, performing or discharging the powers, functions and duties of the Central Board or such State Board under the Water (Prevention and Control of Pollution) Act, 1974, during such period.

Dissolu-
tion of
State
Boards
consti-

49. (1) As and when the Water (Prevention and Control of Pollution) Act, 1974, comes into force in any State and the State Government constitutes a State Board for the Prevention and Control of Water Pollution under that Act, the State Board constituted by the State Government

6 of 1974.

under this Act shall stand dissolved and the Board first-mentioned shall exercise the powers and perform the functions of the Board second-mentioned in that State.

tuted under this Act.

(2) On the dissolution of the State Board constituted under this Act,—

(a) all the members shall vacate their offices a such;

(b) all moneys and other property of whatever kind (including the fund of the State Board) owned by, or vested in, the State Board, immediately before such dissolution, shall stand transferred to and vest in the State Board for the Prevention and Control of Water Pollution;

(c) every officer and other employee serving under the State Board immediately before such dissolution, shall be transferred to and become an officer or other employee of the State Board for the Prevention and Control of Water Pollution and hold office by the same tenure and at the same remuneration and on the same terms and conditions of service as he would have held the same if the State Board constituted under this Act had not been dissolved and shall continue to do so unless and until such tenure, remuneration and terms and conditions of service are duly altered by the State Board for the Prevention and Control of Water Pollution:

Provided that the tenure, remuneration and terms and conditions of service of any such officer or other employee shall not be altered to his disadvantage without the previous sanction of the State Government;

(d) all liabilities and obligations of the State Board of whatever kind, immediately before such dissolution shall be deemed to be the liabilities or obligations, as the case may be, of the State Board for the Prevention and Control of Water Pollution and any proceeding or cause of action, pending or existing immediately before such dissolution by or against the State Board constituted under this Act in relation to such liability or obligation may be continued and enforced by or against the State Board for the Prevention and Control of Water Pollution.

50. The Central Government may, of its own notion or on the recommendation of a Board, by notification in the Official Gazette, add to, or omit from, the Schedule any industry or alter the description of any industry and thereupon the Schedule shall be deemed to be amended accordingly.

Power to amend the Schedule.

51. (1) Every State Board shall maintain a register containing particulars of the persons to whom consent has been granted under section 21, the standards for emission laid down by it in relation to each such consent and such other particulars as may be prescribed.

Mainte-nance of re-gister.

(2) The register maintained under sub-section (1) shall be open to inspection at all reasonable hours by any person interested in, or affected by, such standards for emission or by any other person authorised by such person in this behalf.

52. Save as otherwise provided by or under the Atomic Energy Act, 1962, in relation to radioactive air pollution, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act.

Effect of other laws.

Power
of Central
Govern-
ment to
make
rules.

53. (1) The Central Government may, in consultation with the Central Board, by notification in the Official Gazette, make rules in respect of the following matters, namely:—

- (a) the intervals and the time and place at which meetings of the Central Board or any committee thereof shall be held and the procedure to be followed at such meetings, including the quorum necessary for the transaction of business thereat, under section 10 and under sub-section (2) of section 11;
- (b) the fees and allowances to be paid to the members of a committee of the Central Board, not being members of the Board, under sub-section (3) of section 11;
- (c) the manner in which and the purposes for which persons may be associated with the Central Board under sub-section (1) of section 12;
- (d) the fees and allowances to be paid under sub-section (3) of section 12 to persons associated with the Central Board under sub-section (1) of section 12;
- (e) the functions to be performed by the Central Board under clause (j) of sub-section (2) of section 16;
- (f) the form in which and the time within which the budget and the annual report of the Central Board may be prepared and forwarded to the Central Government under sections 34 and 35;
- (g) the form in which the accounts of the Central Board may be maintained under sub-section (1) of section 36.

(2) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Power of
State
Govern-
ment to
make
rules.

54. (1) Subject to the provisions of sub-section (3), the State Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act in respect of matters not falling within the purview of section 53.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the terms and conditions of service of the members (other than the Chairman and the member-secretary) of the State Board constituted under this Act under sub-section (8) of section 7;

(b) the terms and conditions of service of the Chairman of the State Board constituted under this Act under sub-section (9) of section 7;

(c) the time and place of meetings of the State Board or any committee thereof and the procedure to be followed at such meetings, including the quorum necessary for the transaction of business thereat, under section 10 and sub-section (2) of section 11;

(d) the fees and allowances to be paid to the members of a committee of the State Board, not being members of the Board, under sub-section (3) of section 11;

(e) the manner in which and the purposes for which persons may be associated with the State Board under sub-section (1) of section 12;

(f) the fees and allowances to be paid under sub-section (3) of section 12 to persons associated with the State Board under sub-section (1) of section 12;

(g) the terms and conditions of service of the member-secretary of the State Board constituted under this Act under sub-section (1) of section 14;

(h) the powers and duties to be exercised and discharged by the member-secretary of a State Board under sub-section (2) of section 14;

(i) the conditions subject to which a State Board may appoint such officers and other employees as it considers necessary for the efficient performance of its functions under sub-section (3) of section 14;

(j) the functions to be performed by the State Board under clause (h) of sub-section (1) of section 17;

(k) the form of application for the consent of the State Board, the fees payable therefor, the period within which such application shall be made and the particulars it may contain, under sub-section (2) of section 21;

(l) the procedure to be followed in respect of an inquiry under sub-section (3) of section 21;

(m) the authorities or agencies to whom information under sub-section (1) of section 23 shall be furnished;

(n) the manner in which samples of air or emission may be taken under sub-section (1) of section 26;

(o) the form of the notice and the manner in which a sample of emission shall be divided, under sub-section (3) of section 26;

(p) the form of the report of the State Board analyst under sub-section (1) of section 27;

(q) the form of the report of the Government analyst under sub-section (3) of section 27;

(r) the functions of the State Air Laboratory, the procedure for the submission to the said laboratory of samples of air or emission for analysis or tests, the form of the laboratory's report thereon, the fees payable in respect of such report and other matters as may be necessary or expedient to enable that laboratory to carry out its functions, under sub-section (2) of section 28;

(s) the qualifications required for Government analysts under sub-section (1) of section 29;

(t) the qualifications required for State Board analysts under sub-section (2) of section 29;

(u) the form and the manner in which appeals may be filed, the fees payable in respect of such appeals and the procedure to be followed by the Appellate Authority in disposing of the appeals under sub-section (3) of section 31;

(v) the form in which and the time within which the budget and annual report of the State Board may be prepared and forwarded to the State Government under sections 34 and 35;

(w) the form in which the accounts of the State Board may be maintained under sub-section (1) of section 36;

(x) the particulars which the register maintained under section 51 may contain;

(y) any other matter which has to be, or may be, prescribed.

(3) After the first constitution of the State Board, no rule with respect to any of the matters referred to in sub-section (2) [other than those referred to in clauses (a) and (b) thereof], shall be made, varied, amended or repealed without consulting that Board.

THE SCHEDULE

(See sections 21, 22, 24 and 50)

1. Iron and Steel Plants.
2. Non-ferrous metal industries.
3. Foundries.
4. Mining and Ore processing industries.
5. Coke Ovens and Coal processing plants.
6. Petroleum and Petro-Chemical industries.
7. Power Plants and Boiler Plants.
8. Chemical and allied industries.
9. Ceramic and Cement industries.
10. Textile industries.
11. Processing plants for animal and agricultural products.
12. Plants for recovery from and disposal of wastes including incinerators.

STATEMENT OF OBJECTS AND REASONS

With the increasing industrialisation and the tendency of the majority of industries to congregate in areas which are already heavily industrialised, the problem of air pollution has begun to be felt in the country. The problem is more acute in those heavily and industrialised areas which are also densely populated. Short term studies conducted by the National Environmental Engineering Research Institute, Nagpur, has confirmed that the cities of Calcutta, Bombay, Delhi, etc., are having the impact of air pollution on a steadily increasing level.

2. The presence in air, beyond certain limits, of various pollutants discharged through industrial emissions and from certain human activities connected with traffic, heating, use of domestic fuel, refuse incineration, etc., have detrimental effect on the health of the people as also on animal life, vegetation and property.

3. In the United Nations Conference on the Human Environment held in Stockholm in June, 1972, in which India participated, decisions were taken to take appropriate steps for the preservation of the natural resources of the earth which, among other things, include the preservation of the quality of air and control of air pollution. The Government has decided to implement these decisions of the said Conference in so far as they relate to the preservation of the quality of air and control of air pollution.

4. It is felt that there should be an integrated approach for tackling the environmental problems relating to pollution. It is, therefore, proposed that the Central Board for the Prevention and Control of Water Pollution constituted under the Water (Prevention and Control of Pollution) Act, 1974, will also perform the functions of the Central Board for the Prevention and Control of Air Pollution and of a State Board for the Prevention and Control of Air Pollution in the Union territories. It is also proposed that the State Boards constituted under the said Act will also perform the functions of State Boards in respect of prevention, control and abatement of air pollution. However, in those States in which State Boards for the Prevention and Control of Water Pollution have not been constituted under that Act, separate State Boards for the Prevention and Control of Air Pollution are proposed to be constituted.

5. The Bill seeks to achieve the above objectives.

6. The Notes on clauses appended to the Bill explain in detail the various provisions thereof.

NEW DELHI;

The 14th March, 1978.

SIKANDER BAKHT.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF
THE CONSTITUTION OF INDIA

[Copy of letter No. O-13012/5/71-(LSG) | EPC, dated the 28th March, 1978 from Shri Sikandar Bakht, Minister of Works and Housing and Supply and Rehabilitation to the Secretary, Lok Sabha.]

The President, having been informed of the subject matter of the proposed Bill to provide for the prevention, control and abatement of air pollution, for the establishment, with a view to carrying out the aforesaid purpose, of Boards for the Prevention and Control of Air Pollution, for conferring on and assigning to such Boards powers and functions relating thereto and for matters connected therewith, recommends the consideration of the Bill by Lok Sabha under article 117(3) of the Constitution.

Notes on clauses

Clause 1 provides for bringing the proposed legislation into force in the whole of India on such date as the Central Government may, by notification in the Official Gazette, appoint.

Clause 2 seeks to define certain expressions used in the Bill.

Clause 3 empowers the Central Board for the Prevention and Control of Water Pollution constituted under the Water (Prevention and Control of Pollution) Act, 1974, also to exercise the powers and perform the functions of the Central Board for the Prevention and Control of Air Pollution under this Bill.

Clause 4 provides that the State Boards for the Prevention and Control of Water Pollution constituted under the Water (Prevention and Control of Pollution) Act, 1974, shall also exercise the powers and perform the functions of the State Boards for the Prevention and Control of Air Pollution under this Bill.

Clause 5 provides for the constitution of a State Board for the Prevention and Control of Air Pollution under this Bill in such a State which has not yet constituted a State Board for the Prevention and Control of Water Pollution under the Water (Prevention and Control of Pollution) Act, 1974.

Clause 6 empowers the Central Board to exercise the powers and perform the functions of a State Board for a Union territory under this Bill.

Clauses 7 to 10 lay down the terms and conditions of service of the members of a State Board constituted under this Bill, disqualification for membership and vacancy arising therefrom and meetings of a Board for the purposes of this Bill.

Clause 11 provides for the constitution of committees, the procedure for transaction of business in such committees and for payment of fees and allowances to the members of the committees.

Clause 12 provides for the temporary association of persons with a Board for purposes of advice or assistance.

Clause 13 lays down that a vacancy in a Board or in a committee thereof shall not invalidate acts or proceedings of such Board or committee.

Clause 14 deals with the terms and conditions of service of the member-secretary of a State Board constituted under this Bill. It also provides for the appointment of officers and other employees of a State Board and terms and conditions of service thereof.

Clause 15 provides for the delegation of powers by a State Board to the Chairman or the member-secretary thereof.

Clause 16 provides that the main functions of the Central Board shall be to improve the quality of air and to prevent, control or abate air

pollution in the country. It also specifies in particular certain functions of the Central Board which *inter alia* relate to laying down the standards for the quality of air and establishment of laboratories to perform its functions efficiently.

Clause 17 deals with the functions of the State Boards which *inter alia* relate to laying down the standards for emission of air pollutants into the atmosphere from industrial plants and the establishment of laboratories to perform its functions efficiently.

Clause 18 provides that the Central Board shall be bound by such directions as the Central Government may give to it and every State Board shall be bound by such directions as the Central Board or the State Government may give to it.

Clause 19 empowers the State Governments to declare, by notification in the Official Gazette, air pollution control areas and to do certain other acts in relation thereto. It also empowers the State Governments to prohibit, by notification in the Official Gazette, the use of any fuel, other than an approved fuel, which is likely to cause air pollution, with effect from such date which may not be less than three months from the date of publication of the notification in the Official Gazette. Under this clause the State Governments have also been empowered to direct that no appliance, other than an approved appliance, shall be used in premises situated in an air pollution control area from a specified date.

Clause 20 empowers the State Governments to give instructions to the concerned authorities in charge of registration of motor vehicles under the Motor Vehicles Act, 1939, for ensuring standards for emission from automobiles.

Clause 21 provides that no person shall operate any industrial plant for the purpose of any industry specified in the Schedule to the Bill, in an air pollution control area without the previous consent of the State Board. The clause also lays down the procedure to be followed in respect of such consent. The conditions subject to which such consent shall be granted have also been provided in this clause.

Clause 22 provides that no person carrying on any industry specified in the Schedule to the Bill or operating any industrial plant, in any air pollution control area shall allow emission of any air pollutant in excess of the standards laid down by the State Board.

Clause 23 deals with a case wherein any air pollution control area the emission of any air pollutant into the atmosphere is excess of the standards laid down by the State Board occurs or is apprehended to occur for any reason. It provides that in such a case the person in charge of such premises shall forthwith intimate the fact of such occurrence or apprehension thereof to the State Board and to such authorities or agencies as may be prescribed.

Clause 24 empowers persons authorised by a State Board in this behalf to enter and inspect any place for the purpose of performing any of the functions of the State Board and for determining as to whether the provisions of this Bill or rules framed thereunder have been complied with.

Clause 25 empowers the State Boards and officers empowered in this behalf to obtain information relating to air pollution and to inspect the concerned premises with a view to verifying the correctness of such information.

Clause 26 empowers the State Board or any officer authorised by the Board to take samples of air or emission for analysis from any chimney, flue or duct or any other outlet in the prescribed manner and also lays down the procedure to be followed while taking such samples for analysis.

Clause 27 deals with the manner of dealing with the reports of the result of analysis on samples of emission taken under clause 26. The clause also provides that any cost incurred in getting any sample analysed at the request of the occupier or his agent or when he wilfully absents himself or refuses to sign the containers of samples shall be payable by such occupier or his agent.

Clause 28 provides for the establishment of a State Air Laboratory. It also provides for specifying any laboratory or institute as a State Air Laboratory to carry out the functions entrusted to the State Air Laboratory under this Bill. The clause also empowers the State Government to make rules to provide for the functions of the laboratory and other matters.

Clause 29 deals with the appointment of Government analysts and the Board analysts.

Clause 30 provides for the reports of analysts being used as evidence in any proceeding under this Bill.

Clause 31 makes provision for an appeal against the orders passed by the State Board.

Clause 32 provides for the contributions by the Central Government to the State Boards to enable them to perform their functions under this Bill. This clause, however, further provides that when the Water (Prevention and Control of Pollution) Act, 1974, is amended empowering the State Board constituted under that Act to expend money from its fund thereunder for the purposes of this Bill also, then with effect from the date on which such amendment comes into force in any State in which a State Board has been constituted under that Act, the provisions of this clause shall apply only in relation to such State Boards as are constituted under this Bill.

Clauses 33 to 36 contain the usual provisions relating to funds, budget, annual report, accounts and audit of the Central Board and the State Boards.

Clauses 37 to 41 provide for penalties in respect of offences committed under this Bill.

Clause 42 seeks to give protection to any member, officer or employee of a Board in respect of actions done or intended to be done in good faith in pursuance of this Bill or the rules made thereunder.

Clause 43 lays down that no court shall take cognizance of any offence under this Bill except on a complaint made by, or with the previous sanction in writing of the State Board, and also that no court inferior to

that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under the Bill.

Clause 44 provides that members, officers and employees of a Board when acting or purporting to act in pursuance of any of the provisions of this Bill or the rules made thereunder shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Clause 45 lays down that the Central Board and the State Boards shall furnish to the Central Government and the State Governments respectively such reports, returns, statistics, accounts and other information with respect to their activities under this Bill as may be called for by the respective Governments.

Clause 46 bars the jurisdiction of courts in respect of any matter which the Appellate Authority constituted under this Bill is empowered to determine under this Bill.

Clause 47 empowers the State Government to supersede a State Board constituted under this Bill under certain circumstances.

Clause 48 makes a special provision to deal with a case of supersession of the Central Board or the State Board constituted under the Water (Prevention and Control of Pollution) Act, 1974. It has been provided in this clause that in such a situation the powers, functions and duties of the Central Board or such State Board under this Bill shall be exercised, performed or discharged during the period of such supersession by the person or persons exercising, performing or discharging the powers, functions and duties of the Central Board or such State Board under the Water (Prevention and Control of Pollution) Act, 1974, during such period.

Clause 49 provides that as and when the Water (Prevention and Control of Pollution) Act, 1974, comes into force in a State and the State Government constitutes a State Board for the Prevention and Control of Water Pollution under that Act, the State Board constituted by the State Government under this Bill shall stand dissolved and the Board first-mentioned shall exercise the powers and perform the functions of the Board second-mentioned in that State. This clause also makes other consequential provisions in this behalf.

Clause 50.—This clause empowers the Central Government to amend the Schedule.

Clause 51 provides for the maintenance of a register regarding particulars of consents granted by a State Board.

Clause 52 lays down that, save as otherwise provided under the Atomic Energy Act, 1962, in relation to radioactive air pollution, the provisions of this Bill shall have overriding effect in case of inconsistency with any other enactment.

Clauses 53 and 54 empower the Central Government and the State Governments respectively to make rules in consultation with the Central Board or, as the case may be, the State Board.

The Schedule specifies the industries referred to in clauses 21, 22, 24 and 50.

FINANCIAL MEMORANDUM

The scheme of the Bill is to achieve co-ordination in the matter of environmental pollution control. Hence, it has been provided that the Boards constituted under the Water (Prevention and Control of Pollution) Act, 1974, will also perform the functions relating to prevention, control and abatement of air pollution under this Bill (*vide* clauses 3 and 4). In the States in which the State Boards for the Prevention and Control of Water Pollution have not been constituted under that Act, separate State Boards for the Prevention and Control of Air Pollution will be constituted under this Bill (*vide* clause 5) and the expenditure for the same will be borne by the Central Government. However, as and when the Water (Prevention and Control of Pollution) Act, 1974, comes into force in any such State and that State Government constitutes a State Board for the Prevention and Control of Water Pollution under that Act, the State Board constituted under this Bill will stand dissolved and the liability of the Central Government to meet the expenditure will also cease.

2. In the 15 States which have so far adopted the Water (Prevention and Control of Pollution) Act, 1974, the intention is that the Boards constituted under that Act should also perform the functions relating to prevention, control and abatement of air pollution under this Bill. However, the Water (Prevention and Control of Pollution) Act, 1974, as it is, does not authorise expenditure by the Boards for the work relating to the prevention, control and abatement of air pollution. The said Act is proposed to be separately amended to enable the Boards constituted under that Act to spend also for the work relating to prevention, control and abatement of air pollution under this Bill. In the meanwhile, it has been provided that in these States also the Central Government will meet the expenditure for the work relating to prevention, control and abatement of air pollution. But necessary provisions have been made to the effect that the responsibilities of the Central Government to bear expenditure on the work relating to prevention, control and abatement of air pollution will cease as soon as the proposed amendment to that Act is passed and becomes effective in any State *vide* proviso to clause 32 and sub-clause (3) of clause 33 of the Bill.

3. Under clause 32, the Central Government have to make contributions to the State Boards to perform their functions under this Bill. However, this is covered by a proviso that as soon as the Water (Prevention and Control of Pollution) Act, 1974, is amended, empowering the State Boards constituted under that Act to expend money from their funds for the purposes of this Bill also, the responsibilities of the Central Government to pay to these State Boards will be restricted only to the State Boards constituted under this Bill.

4. Under clause 3, the Central Board for the Prevention and Control of Water Pollution constituted under the Water (Prevention and Control of Pollution) Act, 1974, will also perform the functions of the Central Board for the Prevention and Control of Air Pollution, and of a State Board in the Union territories under clause 6 of the Bill.

5. Under clause 28, the State Government may establish or specify a State Air Laboratory to carry out the functions assigned to it under the Bill. In respect of Union territories, it is proposed to specify the Central Water Laboratory established under section 51 of the Water (Prevention and Control of Pollution) Act, 1974, to perform the functions of the State Air Laboratory also under this Bill.

6. Clause 11 of the Bill provides for the constitution of committees by a Board. Sub-clause (3) thereof provides for the payment of such fees and allowances as may be prescribed to the members of a Committee, other than the members of the Boards, for attending the meetings and for attending to any other work of the Board. The said Central Board for the Prevention and Control of Water Pollution, while performing the functions of the Central Board for the Prevention and Control of Air Pollution and as a State Board for the Prevention and Control of Air Pollution in the Union territories under this Bill, may constitute such committees, for the purposes of this Bill. This may involve some additional expenditure. Similarly, under sub-clause (3) of clause 12, any person associated with the Central Board under sub-clause (1) of clause 12, shall be paid such fees and allowances as may be prescribed.

7. The actual expenditure which the Central Government would be required to incur for implementing the provisions of this Bill cannot be correctly estimated at present. Assuming that the amendments to the Water (Prevention and Control of Pollution) Act, 1974, referred to in paragraph 2 will be passed soon and that some of the remaining 7 States will also adopt that Act, the net expenditure on the Central Government is not likely to exceed Rs. 20 lakhs. This will be a recurring expenditure till all these States adopt that Act and constitute State Boards under that Act. Besides, there will be certain addition to the expenditure in respect of the Central Board for the Prevention and Control of Water Pollution as it has to perform the work relating to prevention, control and abatement of air pollution also in the Union territories in addition to its function as the Central Board for the Prevention and Control of Air Pollution under this Bill. This is estimated at Rs. 10.78 lakhs, out of which Rs. 5.73 lakhs will be recurring expenditure and the remaining will be non-recurring. However, this may be off-set by the revenues expected from the Water (Prevention and Control of Pollution) Cess Act, 1977.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 53 of the Bill empowers the Central Government, after consultation with the Central Board, to make rules for the purpose of giving effect to the provisions of this Bill in respect of matters specified therein.

2. Likewise, clause 54 empowers the State Government to make rules, after consultation with the State Board if that Board has been constituted, in respect of matters not falling within the purview of clause 53.

3. Sub-clause (1) of clause 53 and sub-clause (2) of clause 54 enumerate the various matters with respect to which rules may be made respectively by the Central Government and the State Government. These matters pertain to procedure, form or administrative detail and, as such, the delegation of legislative power is of a normal character.

AVTAR SINGH RIKHY,
Secretary.

